Michael's Painting, Inc., and Painting L.A., Inc. *and* Southern California Painters and Allied Trades, District Council No. 36, Affiliated With International Brotherhood of Painters and Allied Trades, AFL–CIO. Case 31–CA–23358

JULY 26, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND BARTLETT

On July 10, 2000, Administrative Law Judge Jay R. Pollack issued the attached decision.* The Respondents[1] filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondents filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified.[3]

1. The judge found that Michael's Painting, Inc. (MP), and Painting L.A., Inc. (PLA), constitute alter egos. In making this finding, the judge noted that the Respondents had a twofold purpose in establishing PLA—to continue operating their painting business without the substantially higher insurance premiums that would have been charged MP; and to rid themselves of those employees who had picketed MP in support of claims for higher wages and Union recognition.[4] With regard to the latter, the judge also noted the other strong evidence of antiunion animus in the Respondents' conduct violative of Section 8(a)(1) of the Act, specifically, the Respondents' coercive statements, interrogations, interference with lawful picketing, and threats to close the business.

It is well established that the presence of a legitimate business reason for a change in corporate status does not preclude finding alter ego status. *Martin Bush Iron & Metal*, 329 NLRB 124 (1999). Accordingly, we agree with the judge's finding of alter ego status here.[5]

2. Respondent MP and its alter ego, Respondent PLA operate a paint contracting firm in Van Nuys, California. In March 1998, a union organizing campaign involving the Respondents' employees became common knowledge. As more fully detailed below and in the attached decision, the judge found that the Respondents immediately responded to the campaign with several steps that violated the Act. In addition to the usual remedies for the violations found, the judge recommended that the Respondents be ordered to bargain with the Union, consistent with the principles of *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). We agree with the need for a bargaining order, in light of the judge's rationale and the following discussion.[6]

The Board recently restated the basis for evaluating the appropriateness of a *Gissel* bargaining order:

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* The fifth Conclusion of Law should read: "By conditioning the release of the paychecks of Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero upon the presentation of immigration related documents, because of their activities on behalf of the Union, Respondents violated Section 8(a)(1) of the Act.

[1] The Respondents have requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We shall modify the judge's recommended Order in accordance with our decisions in *Indian Hills Care Center*, 321 NLRB 144 (1996), and *Excel Container*, 325 NLRB 17 (1997), and *Ferguson Electric Co.*, 335 NLRB 15 (2001).

We shall substitute a new notice in accordance with our recent decision in *Ishikawa Gasket America, Inc.*, 337 NLRB No. 29 (2001).

The judge ordered the Respondents to cease and desist from violating the Act "in any like or related manner." We find that the Respondents should be required to do so "in any other manner." We note that the Respondents' multiple violations of Sec. 8(a)(1) of the Act and the discharge of five employees in violation of Sec. 8(a)(3) of the Act constituted an unlawful scheme to defeat the Union and deprive the employees of their statutory rights. A broad order is therefore appropriate. *Hickmott Foods*, 242 NLRB 1357 (1979).

[4] There is no 8(b)(7) charge.

[5] In light of our agreement with the judge's finding of alter ego status, we need not pass on the judge's alternative finding, in the remedy section of his decision, that Respondent Michael's Painting, L.A. would be liable to remedy the unfair labor practices of Respondent Michael's under the principles set forth in *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973)—a theory of liability that was not asserted by the General Counsel.

[6] We conclude that the Union gained the support of a majority of the employees on March 31, based on a showing of authorization cards. Therefore, we will modify the judge's recommended Order by changing the date on which the Respondent's bargaining obligation attached from March 27 to March 31. This change is specifically necessitated by the authorization card of employee Rubin Salcedo Ruvalcaba. The card is dated the month of March without the day being specified. The judge discussed this card, specifically validated it, and included it in his majority finding. Accordingly, March 31 constitutes the date the Union achieved majority status, following the commencement of the Respondents' unlawful course of conduct. *Holly Farms Corp.*, 311 NLRB 273, 281 (1993), enfd. 48 F.3d 1360 (4th Cir. 1995), affd. 517 U.S. 392 (1996); *Ultra-Sonic De-burring*, 233 NLRB 1060 fn. 1 (1977), enfd. 593 F.2d 123 (9th Cir. 1979).

> In *Gissel*, the Supreme Court "identified two types of employer misconduct that may warrant the imposition of a bargaining order: 'outrageous and pervasive unfair labor practices' ('category I') and 'less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes' ('category II')." The Court found that, in determining a remedy in category II cases, the Board can take into consideration the extensiveness of an employer's unfair labor practices in determining whether the "possibility of erasing the effects of past practices and ensuring a fair election . . . by the use of traditional remedies, though present, is slight and employee sentiments once expressed by authorization cards would, on balance, be better protected by a bargaining order."

Mercedes Benz of Orland Park, 333 NLRB No. 127, slip op. at 1 (2001) (footnote citations omitted); see also *M. J. Metal Products*, 328 NLRB 1184 (1999), affd. 267 F.3d 1059 (10th Cir. 2001).

This is a *Gissel* category II case. Accordingly, we have evaluated the extensiveness of the Respondents' unfair labor practices to determine whether the Board's traditional remedies are sufficient to negate the coercive impact of these violations on the employees' right to choose union representation. Certain of the unfair labor practices are "hallmark" violations: a threat to close the company rather than become a union shop, and the discharge of five of the most prominent Union supporters who had publicized the dispute by lawful picketing. The Respondents committed other serious unfair labor practices as well: in retaliation for the employees' union activity, the Respondents demanded that they provide documentation of their immigration status before they could be paid; picket signs were taken away from employees; and the Respondents interrogated an employee about his and other employees' union activities. As we observed above in finding a broad remedial order appropriate, these violations, viewed as a whole, represent an unlawful effort to thwart the organizing drive and deny the employees the exercise of their Section 7 rights.

The coercive impact of the Respondents' unfair labor practices is unmistakable. To begin, the size of the employee unit was small: 12 employees were actively employed at the time of most of the violations, out of a total complement of 34 employees for collective-bargaining purposes.[7] In a group of this size, the severity of the Respondents' unfair labor practices predictably would have a deep and lasting impact on every employee. See, e.g., *Debbie Reynolds Hotel*, 332 NLRB No. 46, slip op. at 2 (2000); *Traction Wholesale Center Co.*, 328 NLRB 1058, 1077 (1999), enfd. 216 F.3d 92 (D.C. Cir. 2000).

In this context, the Respondents acted quickly and decisively on Friday, March 27, once the employees' picketing began and their union activities became known. The Respondents confiscated the picket signs of two of the employees that day, and that evening the Respondents told eight of the employee pickets that the Company would close before it would go union. On Monday, March 30, the Union requested recognition as the employees' collective-bargaining representative. The Respondents replied that the picketing employees had no jobs as long as they supported the Union. On the same day, the Respondents required employees to provide proof of their lawful immigration status in order to receive their paychecks; prior to the picketing, the Respondents' position was that such documentation was not significant once employees were hired. The following day, March 31, the Respondents discharged five of the picketing employees because of their support of the Union. Thus, in the space of 3 working days, the Respondents threatened the loss of jobs through closure of the business and otherwise coerced most of the employees who were actively employed, and then unlawfully discharged almost half of them.

On April 20, after PLA came into existence as the alter ego of MP, the Respondents unlawfully interrogated one of the discharged employees about his and other employees' union activities during a job interview. This clearly suggests that the Respondents intended to maintain the unlawful advantage gained during the 3 days in March.

This overall course of unlawful conduct quite likely accomplished what the Respondents intended: a decisive, overwhelming response to the organizing drive. The "hallmark" violations especially stand out. The Board has observed that plant-closure threats and the discharge of union adherents are "the most flagrant forms of interference with Section 7 rights and are more likely to destroy election conditions for a longer period of time than are other unfair labor practices because they tend to reinforce the employees' fear that they will lose their employment if union activity persists." *A.P.R.A. Fuel Oil*, 309 NLRB 480, 481 (1992) (footnote citation omitted), enfd. 28 F.3d 103 (2d Cir. 1994). See also *Traction Wholesale Center*, supra at 1077.

The involvement of the Respondents' two highest officials substantially enhanced the impact of the unfair labor practices. See, e.g., *Mercedes Benz*, supra slip op. at 2. Thus, either one or both of the Respondents' principals, Michael and Laurie Abikasis, directly committed

[7] The parties stipulated to the size of the bargaining unit pursuant to construction industry eligibility standards. See generally *Daniel Construction Co.*, 167 NLRB 1078 (1967).

the violations above, with the sole exception of the confiscation of picket signs on March 27. When the highest level of management conveys the employer's antiunion stance by its direct involvement in unfair labor practices, it is especially coercive of Section 7 rights and the employees witnessing these events are unlikely to forget them. Id., *Parts Depot, Inc.*, 332 NLRB No. 64, slip op. at 6 (2000), enfd. mem. (D.C. Cir. 2001); *Traction Wholesale Center*, supra at 1077; *Consec Security*, 325 NLRB 453 (1998), enfd. 185 F.3d 862 (3d Cir. 1999).

In addition, without minimizing the routine effectiveness of the Board's traditional notice-posting remedy, given the severity of the violations in this case a posted notice would not adequately erase the long-term effects of the Respondents' misconduct in this workplace. Similarly, although the five unlawfully discharged employees are entitled to reinstatement and backpay, we do not believe these traditional remedies would fully negate the impact of the Respondents' discrimination on potential organizing activity. The Respondents' 3 days of unfair labor practices, culminating in the discharge of the five union supporters, delivered an unmistakable message to all of the employees. In the circumstances, they would likely view the possibility of reinstatement as woefully insufficient to balance their risk of discharge and a term of unemployment should they resume their organizing activities. See *Mercedes Benz*, supra at slip op. 3; *M. J. Metal Products*, supra at 1185.

In evaluating the appropriateness of a *Gissel* order in this case, we have taken account of the circumstances existing at the present time, and we have considered the inadequacy of the Board's traditional remedies. See, e.g., *Flamingo Hilton-Laughlin v. NLRB*, 148 F.3d 1166 (D.C. Cir. 1998).[8] We have also duly considered the Section 7 rights of all employees involved. As the Board has said previously, "the *Gissel* opinion itself reflects a careful balancing of the employees' Section 7 rights 'to bargain collectively' and 'to refrain from' such activity." *Mercedes Benz*, supra at slip op. at 3; *M. J. Metal Products*, supra at 1186. See *Gissel*, supra at 612–613. In short, the rights of the Respondents' employees favoring unionization are protected by the bargaining order we issue today. The rights of those employees opposing the Union are safeguarded by their access to the Board's decertification procedure under Section 9(c)(1) of the Act, following a reasonable period of time to allow the collective-bargaining relationship a fair chance of success.

For all of the reasons above, as well as those set forth by the judge, we conclude that the conduct of a fair election in the future would be unlikely, and that the "employees' wishes are better gauged by an old card majority than by a new election." *Charlotte Amphitheater Corp. v. NLRB*, 82 F.3d 1074, 1078 (D.C. Cir. 1996). Thus, we agree that a *Gissel* bargaining order is necessary and appropriate in this case, and we adopt the judge's recommended remedy accordingly.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondents Michael's Painting, Inc., and Painting L.A., Inc., Van Nuys, California, their officers, agents, successors, and assigns shall take the action set forth in the Order as modified.

1. Cease and desist from

(a) Discharging employees in order to discourage union membership or activities.

(b) Demanding immigration documents from its employees in order to discourage union membership or activities.

(c) Threatening to close its business if its employees engaged in union activities.

(d) Interrogating its employees regarding their membership in, or support for, the Union.

(e) Interfering with lawful picketing activity.

(f) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer full reinstatement to Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make whole Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero for any and all losses incurred as a result of Respondents' unlawful discharges of them, with interest, as provided in the remedy section of the judge's decision.

(c) Within 14 days from the date of this Order, expunge from its files any and all references to the discharges of Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero and, within 3 days thereafter, notify them in writing that this has been done and

[8] The Respondents do not contend that changed circumstances between the time of the unfair labor practices and the prospective issuance of a *Gissel* order make such a remedy unnecessary. Thus, the passage of time and any intervening turnover of employees and management—matters which have concerned some courts in addressing the Board's *Gissel* orders—are not at issue in this case. See *Mercedes Benz*, supra slip op. at 2; *M.J. Metal Products*, supra at 1185.

that Respondents' discipline of them will not be used against them in any future personnel actions.

(d) The Respondents shall, upon request, recognize and bargain collectively with Southern California Painters and Allied Trades, District Council No. 36, affiliated with International Brotherhood of Painters and Allied Trades, AFL–CIO, as the exclusive collective-bargaining representative from March 31, 1998, regarding wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement, with respect to the following bargaining unit:

> All painters employed by Michael's Painting, Inc., and Painting L.A., Inc. at their Van Nuys, California facilities, excluding office clerical workers, guards, and supervisors as defined in the Act.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to determine the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Van Nuys, California facilities copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by Respondents' authorized representative, shall be posted for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to ensure the notices are not altered, defaced, or covered by other material. Because Respondent Michael's Painting, Inc. has gone out of business or closed the facilities involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the attached notice to all current employees and former employees employed by the Respondents at any time since March 27, 1998.

(g) Within 21 days after service by the Region, file with the Regional Director, a sworn certification of a responsible official on a form provided by the Region attesting to the steps Respondents have taken to comply.

Dated, Washington, D.C., July 26, 2002

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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Peter J. Hurtgen, Chairman

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Wilma B. Liebman, Member

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Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

> Form, join, or assist a union
> Choose representatives to bargain with us on your behalf
> Act together with other employees for your benefit and protection
> Choose not to engage in any of these protected activities.

WE WILL NOT discharge employees in order to discourage union membership or activities.

WE WILL NOT demand immigration documents from employees because our employees engaged in union activities.

WE WILL NOT threaten to close our business if our employees engage in union activities.

WE WILL NOT interrogate our employees regarding their membership in, or support for, the Union.

WE WILL NOT interfere with lawful picketing activity.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer reinstatement to Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero to the positions they would have held, but for their unlawful discharges.

WE WILL make whole Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero for any and all losses incurred as a result of our unlawful discharge of them, with interest.

WE WILL expunge from our files any and all references to the unlawful discharges of Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero and notify each of them in writing that this has been done

and that this unlawful discipline will not be used against them in any future personnel actions.

WE WILL, upon request, recognize and bargain collectively with Southern California Painters and Allied Trades, District Council No. 36, affiliated with International Brotherhood of Painters and Allied Trades, AFL–CIO, as the exclusive collective-bargaining representative from March 31, 1998, regarding wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement, with respect to the following bargaining unit:

> All painters employed by Michael's Painting, Inc., and Painting L.A., Inc. at our Van Nuys, California facilities excluding office clerical workers, guards, and supervisors as defined in the Act.

MICHAEL'S PAINTING, INC., AND
PAINTING L.A., INC.

Nathan Laks, for the General Counsel.
Howard M. Knee (Knee & Ross), of Los Angeles, California, for the Respondents.
Anthony Segall (Rother, Segall & Greenstone), Los Angeles, California, for the Union.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Los Angeles, California, on May 5–7, and May 12–14, 1999. On May 4, 1998, Southern California Painters and Allied Trades, District Council, No. 36, affiliated with International Brotherhood of Painters and Allied Trades, AFL–CIO (the Union), filed the original charge alleging that Michael's Painting, Inc. (Respondent Michael's), and Painting L.A., Inc. (Respondent L.A.), herein collectively called Respondents, committed certain violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). The Union filed an amended charge on October 28, 1998. On October 30, 1998, the Regional Director for Region 31 of the National Labor Relations Board issued a complaint and notice of hearing against Respondents alleging that Respondents violated Section 8(a)(1), (3), and (5) of the Act. Respondents filed a timely answer to the complaint denying all wrongdoing.

The complaint alleges that Respondent L.A. is an alter ego of Respondent Michael's. The complaint further alleges that Respondent violated the Act by discharging or laying off employees, and conditioning employment on production of immigration documents in retaliation for the employees' union activities. Moreover, the complaint alleges that Respondents unlawfully interrogated employees, took picket signs away from employees, and threatened to close its business. Finally the complaint alleges that a bargaining order is the proper remedy for Respondents' egregious conduct. Respondents deny that Respondent L.A. is an alter ego of Respondent Michael's and Respondents deny the commission of any unfair labor practices.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses[1] and having considered the post-hearing briefs of the parties, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Respondent Michael's is a California corporation with an office and place of business in Van Nuys, California, where it was engaged in the construction industry as a painting contractor. During the 12 months prior to issuance of the complaint, Respondent Michael's provided goods and services valued in excess of $50,000 to customers, who meet the Board's direct standards for asserting jurisdiction. Respondent admits and I find that Respondent Michael's is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The complaint alleges jurisdiction over Respondent L.A. based on the operations of Respondent Michael's.

Respondents admit and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

As discussed above, Respondent Michael's was a painting contractor in Van Nuys, California. The only officers, stockholders, and directors of the corporation were Michael Abikasis and his wife, Laurie Abikasis.

During January and February 1998, the Union held a series of meetings for the employees of Respondent Michael's. The Union officials discussed union benefits and also questioned whether Respondents were paid the prevailing wages required by certain of its subcontracts on government jobs. At these meetings, union authorization cards were distributed and signed.

On March 27, employees of Michael's Painting accompanied by agents of the Union began picketing Michael's Painting's jobsite in Santa Monica, California. Employees Alejandro Duenas, Jose Lainez, Guadalupe Hector Salazar, Jose Salazar, Martin Salas and Saul Romero, participated in the picketing which took place during the employees' lunchbreak. The signs protested the alleged failure to pay prevailing wages. Respondent Michael's supervisor Vicente Cheverria took picket signs away from Lainez and Jose Salazar. After the employees had returned to work, Cheverria questioned the employees as to whether they joined or supported the Union. The employees

[1] The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Manufacturing Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence or because it was in and of itself incredible and unworthy of belief.

answered that they supported the Union. Respondent had 12 employees on its payroll at this time.

On the afternoon of March 27, employees also picketed at the offices of Respondent Michael's with signs protesting the alleged failure to pay prevailing wages. The signs stated "We need a Union," "Michael's Painting is unfair," "It is alright to be Union," "Michael's fired me for asking for the legal wage," and "Michael's Painting doesn't pay prevailing wages." Union business agent Alexander Lopez spoke to Laurie Abikasis. Lopez told Laurie Abikasis that he had signed union authorization cards from Respondents' employees. Lopez read the names of the employees to Mrs. Abikasis. Laurie Abikasis told Lopez that she didn't have anything to do with Respondent Michael's. Lopez answered that she owned 51 percent of the Company. Laurie Abikasis told Lopez to return Monday, March 30, to speak with Michael Abikasis, and Lopez agreed to do so. That same afternoon, Laurie Abikasis questioned employee Alejandro Duenas about his union sentiments. Laurie Abikasis also told employee Carlos Vega not to talk to the people picketing.

The picketing moved to the Abikasis' residence during the evening of March 27. The employees picketing were Duenas, Carlos Vega, Martin Vega, Jose Salazar, Hector Salazar, Saul Romero, Jose Lainez and Martin Salas. Laurie Abikasis told the employees that Respondent did not want the Union and did not need the Union. She also said that she and her husband would close the Company rather than become a union shop. Laurie Abikasis said she could not afford to be Union; she would go broke if she became a union shop, and that the union agents were parasites.

On Monday, March 30, Union agent Alexander Lopez asked Michael Abikasis to recognize the Union. Michael Abikasis stated that he would look into the matter and discuss it with Lopez at a later date. Lopez asked that Abikasis put the painters back to work, but Abikasis told Lopez that as long as the employees wanted to be represented by the Union, they did not have a job. Employees Lainez, Duenas, Romero, Martin Vega and Carlos Vega had already reported for work that morning. All five employees were turned away by Michael Abikasis. After his conversation with Michael Abikasis, Lopez told the employees that Michael had said that as long as they supported the Union, they could not work. That afternoon, Laurie Abikasis told each of the employees that their paychecks could not be released unless the employees first provided a green card, social security number, or driver's license. Laurie told Duenas that his social security number was not valid and if he did not bring a valid green card, social security card, or driver's license, he could no longer work for Respondent Michael's. The employees were paid later that day. Duenas' check included the proper amount for prevailing wage jobs. Supervisor Cheverria, and employees Jose Salazar, Hector Salazar, and Martin Salas went to San Jose, California to start a new job for a different employer and did not report to work for Respondent Michael's on March 30. Thus, there is no evidence that Respondent discharged Jose Salazar, Hector Salazar, or Martin Salas, as alleged in the complaint. Prior to any misconduct by Respondent on March 30, these three employees chose to go with Cheverra to work for another employer.

Prior to this dispute, Respondent was indifferent towards immigration documents. Cheverria had told job applicants that they could present fake immigration documents, it made no difference to Respondent Michael's. Further, prior to this dispute, Respondent Michael's only requested immigration documents at the time of an employee's hire. There was no followup. However; on the afternoon of March 30, Laurie and Michael Abikasis told five employees that they could not receive their paychecks absent valid documentation. The employees were eventually paid that afternoon.

The next day, on March 31, Respondent Painting L.A. was incorporated. When Lainez, Duenas, Romero, Martin Vega, and Carlos Vega reported for work, Michael Abikasis turned them away. Abikasis said "There is no more work for you guys. It's finito." The employees did not work for Respondent Michael's again.

During April, Lainez sought work from Respondent Painting L.A. Lainez had worked for Respondent Michael's for 3 years. Laurie and Michael Abikasis questioned Lainez regarding his union authorization card and the cards of other employees. Lainez answered these questions in writing, desiring to obtain employment with Respondents. However, Lainez was never called back to work.

As stated above, Respondent L.A. filed its articles of incorporation with the State of California on March 31. On April 2, the Board of Directors of Respondent L.A. (Laurie Abikasis) approved the purchase of the assets and vehicles of Respondent Michael's. On April 15, Michael's Painting accepted an offer from Painting L.A. for Respondent L.A. to perform warranty work on Respondent Michael's outstanding jobs. On May 8, acting through an escrow agent, Respondent Michael's sold its assets to Respondent L.A. in return for the cancellation of an allegedly preexisting obligation to Painting L.A.

Laurie Abikasis is the sole shareholder, director and officer of Respondent L.A. However, Respondent L.A.'s employee rules instruct employees that their work must be satisfactory to Michael Abikasis. Michael Abikasis made hiring, firing, and wage determinations for Respondent L.A. Further Michael Abikasis visited jobsites and gave work directions to employees and foremen. Michael Abikasis was the contact person for Respondent L.A.'s customers.

Employee Carlos Alberto Gomez testified that he worked for Respondent L.A. for 3 months beginning in December 1998. Gomez was told that Michael Abikasis did the hiring and set the wages for Respondent L.A.'s employees. Gomez testified that Michael Abikasis visited his jobsites two or three times a week and supervised Gomez and other employees on the jobs, including supervisor Felipe Sahagun. Gomez received Company policies that stated that employees were required to report absences to Michael Abikasis and that employees were required to perform work to Michael Abikasis' satisfaction. Laurie Abikasis, on the other hand did not visit the jobsites.

Jose Alberto Munos worked for Painting L.A. for 5 weeks beginning January 21, 1999. The office manager told Munos that Michael was the boss. On one occasion, Munos was absent from work and needed Michael Abikasis' permission to return to work. Munos testified that Michael granted wage increases and that it was Michael Abikasis who discharged him. Munos

testified that Michael Abikasis visited jobsites and issued directions to employees. Further, Munos did not see Laurie Abikasis at any jobsite.

Although Respondents contend that Respondent L.A. began operations on April 1, its payroll records show no employees in April or May. The employees who worked for Respondent L.A. during April and May appeared on the payroll records of Respondent Michael's. Respondent L.A.'s payroll records show that it did not employ any employees until June, when it employed 10 employees.[2] Three of these employees had been employed by Respondent Michael's on March 27, but did not engage in the picketing. The only other employee of Respondent's Michael's who did not engage in the picketing was later hired as a supervisor by Respondent L.A. Respondent L.A. did not employ the other eight employees on Respondent Michael's payroll on March 27.

Respondents contend that Respondent Michael's ceased doing business and Respondent L.A. commenced its painting business solely because of the troubles Respondent Michael's was having in obtaining liability insurance. Respondent Michael's liability insurance was set to expire on March 1, 1998. Due to over 10 claims for product defects against the company, the company was facing significant increased costs for insurance premiums. Further, numerous insurance quotes sought to exclude condominium, residential, and apartment work (a considerable portion of the company's revenues). In February 1998, Respondent Michael's obtained an extension of the liability insurance until April 1, 1998. Also, in February, Laurie Abikasis and Respondent Michael's insurance agent concluded that the only way to obtain affordable insurance for the business was to obtain insurance under the name of Painting L.A. Because Painting L.A. did not have Respondent Michael's exposure and claims history, Painting L.A. was able to obtain insurance at a more favorable rate. Since Painting L.A. did not have a loss history, Painting L.A. was able to obtain insurance at a premium agreeable to Laurie Abikasis. Based on these facts, I conclude that even in the absence of the Union activities described above, Respondents would have commenced business as Painting L.A. on April 1, 1998.

The parties stipulated that the following employees of Respondents, constitute an appropriate collective-bargaining unit:

> All painters employed by Michael's Painting at its Van Nuys, California facility excluding office clerical workers, guards, and supervisors as defined in the Act.

As indicated earlier, on March 27, Respondent employed 12 painters. However, the parties agreed that the bargaining unit consisted of 34 employees based on the eligibility formula for the construction industry set forth in *Daniels Construction Co.*, 167 NLRB 1078 (1967).[3] The General Counsel alleges that on March 27, the Union had obtained signed authorization cards from a majority of the employees in the unit. The General Counsel offered 18 authorization cards to establish a card majority prior to March 27, 1998. I will discuss only the five cards in which issues arose regarding the validity of the cards.

Jose Lainez testified that he filled out his union authorization card on January 21, 1998 at a union meeting. Lainez printed his name and handed the card to the union business agent but did not sign the card. Lainez testified that he intended to sign the card. Respondent contends that Lainez's card should not be counted towards a majority because Lainez never signed the card. I find that Lainez intended to authorize the Union to represent him. The fact that he filled out the card and submitted it to the Union outweighs his failure to sign the card.

Guadalupe Salazar filled out his authorization card on March 27 and handed it to back to the union officials. Salazar printed his name on the line for his name and again on the signature line. I find that the use of printing does not render the card invalid. *Triggs-Miner Corp.*, 180 NLRB 206, 210–211 (1969). Similarly, employee Antonio Perez printed his name on the line for his name and the signature line. Antonio Perez filled out his card at the Union offices and he returned the card to the Union. I find by such conduct Perez designated the Union to represent him for purposes of collective bargaining.

Employee Rubin Salcedo Ruvalcaba filled out his authorization card at the union offices. Ruvalcaba read the card in Spanish, his native language. Ruvalcaba testified that he signed the card to show that he agreed with "whatever I was doing." I believe that he was supporting an attempt to receive prevailing wages for Respondents' government jobs. I find that Ruvalcaba read the card, and signed it voluntarily. There was no misrepresentation. Accordingly, I count this card towards the Union's majority. See *Dresser Industries*, 248 NLRB 33 (1980). Employee Victor Perez read his card in Spanish, his native language, and signed the card voluntarily. Victor Perez was an employee of Respondent L.A. and attempted to disavow the authorization card. I find Perez voluntarily signed the card and that no misrepresentations were made to him. Accordingly, I find that Perez's card should be counted towards the Union's majority. Under these circumstances, I find that by March 27, 1998, the Union had 18 valid authorization cards in a bargaining unit consisting of 34 employees.

B. Conclusions

1. Alter ego

The complaint alleges that Respondent Painting L.A. is an alter ego of Respondent Michael's Painting. The criteria the Board looks to in deciding alter ego status are substantially identical management, business purposes, operation, equipment, customers, supervision, and ownership. See *Merchants Iron & Steel Corp.*, 321 NLRB 360 (1996).

In *Perma Coatings*, 293 NLRB 803, 804 (1989), the Board stated:

[2] The employees who allegedly performed work for Respondent L.A. in April and May, were carried on the payroll of Respondent Michael's. The employees who allegedly performed work for Respondent L.A. in April and May, were carried on the payroll of Respondent Michael's.

[3] In addition to the employees employed during the payroll period preceding March 27, 1998, all employees in the unit who have been employed for a total of 30 or more days within the period of 12 months, or who have been employed 45 days or more within the 24 months preceding the eligibility date.

> While it is true that a sincere motivation for operation of a new corporation does not preclude finding alter ego status, the absence of union animus nevertheless generally militates against finding a "disguised continuance" of the predecessor.

The Board in *Perma Coatings*, supra, found no alter ego where there was no substantial commonality of ownership and no evidence of antiunion animus.

In *Goski Trucking Corp*., 325 NLRB 1032 (1998), the administrative law judge found that two companies were a single employer. However, the judge found that the companies were not alter egos on the ground that the formation of the second was based on the respondent's desire to avoid substantially increased insurance costs. The judge further found that no union motivation for disguised continuance existed at the time of the formation of the second company. The Board affirmed the judge's decision on the merits. However, the Board stated that since it adopted the dismissal of the complaint on the merits it was not necessary for the Board to pass on the judge's alter ego findings. See *Martin Bush Iron & Metal*, 329 NLRB 124 (1999).

As stated above, I find that Laurie and Michael Abikasis established Respondent L.A. to continue operating their painting business without the substantially higher insurance premiums that would have been charged Respondent Michael's. There can be no doubt that Respondent L.A. continued the business of Respondent Michael's with the identical management, business purposes, operation, equipment, customers, supervision, and ownership. The only change in the business was the name. Just 4 days prior to the name change, Respondents were faced with the unwanted demands of the employees for higher wages and union representation. Although Respondents knew in February that the business would be continued under the license and name of Painting L.A., the sale did not take place until May.

From the record evidence it is apparent that Respondents used the formation of Respondent L.A. to rid itself of the eight employees who had picketed Respondent Michael's in support of the claims for higher wages and union recognition. I find, contrary to the arguments of Respondents, that there is strong evidence of union animus. The evidence reveals that Respondents firmly believed that the costs of the Union's demands would put Respondents out of business. Laurie Abikasis threatened to close the business rather than become a union shop. Michael Abikasis admitted that as long as the employees supported the Union, he would not assign them work. There was no lawful reason why Respondents had to discharge the employees after the name of the business was changed to Painting L.A. for insurance reasons.

All the indicia for the finding of an alter ego are present in this case. The fact that Respondents changed the name of the business to avoid higher insurance premiums should not allow Respondents to avoid its obligations to the employees and the Union under the Act.

2. The discharges

In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. Upon such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Corp*., 462 U.S. 393, 399–403 (1983). In *Manno Electric*, 321 NLRB 278 at fn. 12 (1996), the Board restated the test as follows:

> The General Counsel has the burden to persuade that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employees had not engaged in protected activity.

For the following reasons, I find that General Counsel has made a strong prima facie showing that Respondent was motivated by unlawful considerations in discharging Duenas, Romero, Lainez, Carlos Vega, and Martin Vega.

First, the timing of the discharge, shortly after the employees had picketed Respondent Michael's at a jobsite, its offices, and the residence of its owners, suggests union animus as a motivating factor in Respondent Michael's decision. Secondly, Respondent had expressed strong union animus. Laurie Abikasis had said that she would close the business rather than become a union shop. The threat of business closure and concomitant loss of jobs are particularly destructive of employee freedom of choice. See, e.g., *Milgo Industrial*, 203 NLRB 1196, 1200–1201 (1973), affd. mem. 497 F.2d 919 (2d Cir. 1974); *Midland-Ross Corp. v. NLRB*, 617 F.2d 977, 987 (3d Cir. 1980); and *Chromalloy American Corp. v. NLRB*, 620 F.2d 1120, 1130 (5th Cir. 1980). Michael Abikasis told Union agent Lopez that the five employees would not work for Respondents as long as they supported the Union. Not only is such a statement evidence of hostility toward the employees because of their union activity, but it constitutes an outright confession of Respondents' motive in discharging the employees because they supported the Union. *American Petrofina Co. of Texas*, 247 NLRB 183 (1980).

The burden shifts to Respondents to establish that the same action would have taken place in the absence of the employees' union activities. Where, as here, General Counsel makes out a strong prima facie case under *Wright Line*, the burden on Respondent is substantial to overcome a finding of discrimination. *Eddyleon Chocolate Co*., 301 NLRB 887, 890 (1991). Respondent has not met its burden under *Wright Line*. Its assertion that Respondent L.A. had a lesser need for painters than Respondent Michael's is not sufficient to overcome the prima facie case.[4] An employer cannot carry its *Wright Line* burden simply by showing that it had a legitimate reason for the action, but must "persuade" that the action would have taken place even absent the protected conduct. *Centre Property Manage-*

[4] The records show that four painters worked for Respondents during April, six painters worked for Respondents during May, and ten painters worked in June.

ment, 277 NLRB 1376 (1985); *Roure Betrand Dupont, Inc*., 271 NLRB 443 (1984).

Thus, I find that Respondent has failed to carry its burden under *Wright Line* and that the discharge of the five employees violated Section 8(a)(3) and (1) of the Act. See *Bronco Wine Co*., 253 NLRB 53 (1981); *Hunter Douglas, Inc*., 277 NLRB 1179 (1985).

3. The independent 8(a)(1) allegations

The evidence establishes that prior to the picketing and union activities, Respondent Michael's did not strictly follow the requirements of the immigration laws. In fact, supervisor Cheverria informed employees that they could present false documentation and that it made no difference to Respondent Michael's. However after the picketing, Respondent demanded that the employees, who had picketed and signed union authorization cards, provide documentation of their authorization to work in this country. Because of the timing of these requests, Respondent Michael's prior casual attitude regarding immigration documents and Respondent Michael's animus against union activities, I find that the demands for additional documentation were motivated by union animus in violation of Section 8(a)(1) of the Act. *Victor's Café 52*, 321 NLRB 504, 514 (1996).

As found above, on March 27, at a jobsite in Santa Monica, employees picketed during their lunch hour. The picket signs indicated that the employees desired union representation and prevailing wages. Cheverria took picket signs away from two employees. Clearly, the employees had a statutory right to picket their employer during their lunchbreak. Therefore, I find that by interfering with this protected activity, Respondent's violated Section 8(a)(1) of the Act.

On March 27, while the employees were picketing at the Abikasis' residence, Laurie Abikasis stated that Respondent could not afford to be a union shop, the Union would force Respondents into bankruptcy and that Respondents would close the business rather than become a union shop. I therefore find that Respondents violated Section 8(a)(1) of the Act.

The evidence reveals that on April 20, when Lainez sought employment with Respondents, Michael and Laurie Abikasis, questioned Lainez about the circumstances under which he and the other employees signed their union authorization cards. Lainez was questioned by Respondents' two owners, in the context of unlawful threats, Lainez' prior unlawful termination and in his attempt to obtain employment. I therefore find that by such coercive interrogation, Respondents violated Section 8(a)(1) of the Act.

4. The bargaining order

The General Counsel and the Union argue that the Respondent's unlawful conduct here was so egregious and pervasive that it created a coercive atmosphere rendering impossible the holding of a fair representation election. They assert that the only appropriate remedy given the severity of the Respondents' conduct is the imposition of a bargaining order under *NLRB* v. *Gissel Packing Co.*, 395 U.S. 575 (1969).

In *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969), the leading case on remedial bargaining orders, the United States Supreme Court held:

(1) Even in the absence of a demand for recognition, a bargaining order may issue if this is the only available effective remedy for unfair labor practices.

(2) Bargaining orders are clearly warranted in exceptional cases marked by outrageous and pervasive unfair labor practices.

(3) Bargaining orders may be entered to remedy lesser unfair labor practices that nonetheless tend to undermine majority strength and impede the election process. If a union has achieved majority status and the possibility of erasing the effects of the unlawful conduct and of ensuring a fair election through traditional remedies is "slight," a bargaining order may issue.

I find that under the circumstances of this case, a bargaining order is the only appropriate remedy for the unfair labor practices committed by the Respondents. The Union's majority status was established on March 27, when it had obtained valid authorization cards from 18 of the 34 painters in the bargaining unit.

Having learned on March 27 that its painters were engaged in picketing and organizational efforts, Respondents embarked on a course of unlawful conduct designed to undermine and evade its employees' efforts in this regard. Respondents' conduct included the unlawful interrogation, threats of closing the business, and demanding immigration documents of employees because of their involvement with the Union. Some of this unlawful conduct, more particularly the threats of plant closure and resultant discharge, amount to "hallmark" violations of the Act. The Board has long held that "[t]hreats to eliminate the employees' source of livelihood have a devastating and lingering effect on employees, an effect that most effectively can be remedied by an order to bargain." *New Life Bakery*, 301 NLRB 421, 431 (1991); and *White Plains Lincoln Mercury*, 288 NLRB 1133, 1140 (1988). The coercive nature of such conduct was rendered even greater by the fact that these threats were made by Respondents' owners Laurie and Michael Abikasis. See, *Q-1 Motor Express*, 308 NLRB 1267, 1268 (1992); also, *Weldun International*, 321 NLRB 733 (1996). Of greater significance, however, is the fact that Respondents did not confine itself simply to threats of discharge but indeed carried out such threats initially by denying work assignments to the employees on March 30, discriminatorily conditioning payment of wages upon presentation of immigration documents and eventually discharging the employees on March 31. Respondents' unlawful discharge of five employees in immediate retaliation against their card signing, is among the "less remediable" of unfair labor practices. Loss of employment, frequently referred to as the "capital punishment" of the workplace, has long been recognized as the type of action which will have a long-lasting coercive impact on the work force and demonstrates most sharply the power of the employer over the employees. *New Life Bakery*, supra; *White Plains Lincoln Mercury*, 288 NLRB 1133, 1139–1140 (1988). Given the small size of the Respondents' operation and the swift and massive discharge of em-

ployees who had signed cards supporting the Union, the Respondents' actions have a pervasive and lasting impact.

In light of the above circumstances, including the relatively small size of the unit, the swiftness, severity, and extensiveness of Respondents' unlawful conduct, and the involvement by upper management in such activities, I find it highly unlikely that Respondents' employees would be willing or freely able to express their choice in an election. I conclude that the discriminatory discharge of five employees out of a payroll of 12 employees justifies a *Gissel* order in this case. Accordingly, I am convinced that merely requiring Respondents to refrain from any unlawful conduct will not suffice to erase the lingering effects of Respondents' violations. See, e.g., *Adam Wholesalers, Inc.*, 322 NLRB 313 (1996). Accordingly, I find that the employees' desires for union representation, as demonstrated by the Union authorization cards would be better protected by a bargaining order than by traditional remedies. As the Union's majority status was achieved on March 27, and as the evidence indicates that Respondents' conduct began that same date, Respondents' bargaining obligation is deemed to have begun on March 27, 1998.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating employees, interfering with lawful picketing activity, and threatening to close its business, Respondent violated Section 8(a)(1) of the Act.

4. By discharging employees Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero because of their activities on behalf of the Union, Respondents violated Section 8(a)(3) and (1) of the Act.

5. By conditioning the release of the paychecks of Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero because of their activities on behalf of the Union, Respondents violated Section 8(a)(3) and (1) of the Act.

6. The above unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondents engaged in unfair labor practices, I shall recommend that they be ordered to cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

I shall recommend that Respondents offer Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero full and immediate reinstatement to the positions they would have held, but for their unlawful terminations. Further, Respondents shall be directed to make whole Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero for any and all loss of earnings and other rights, benefits, and privileges of employment they may have suffered by reason of Respondents' discrimination against them, with interest. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). See also *Florida Steel Corp.*, 231 NLRB 651 (1977), and *Isis Plumbing Co.*, 139 NLRB 716 (1962).

Respondents shall also be required to expunge any and all references to their unlawful discharge of Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero from its files and notify each of the employees in writing that this has been done and that the unlawful discipline will not be the basis for any adverse action against him in the future. *Sterling Sugars, Inc.*, 261 NLRB 472 (1982).

Respondents shall be required, upon request, to recognize and bargain collectively with Southern California Painters and Allied Trades, District Council No. 36, Affiliated with International Brotherhood of Painters and Allied Trades, AFL–CIO, as the exclusive collective-bargaining representative from March 27, 1998, with respect to the painters employed by Respondents, regarding wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

I note that even if a reviewing authority would reverse my finding that Painting L.A. is an alter ego of Respondent Michael's, Painting L.A. would still be liable under the Supreme Court's holding in *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973), to remedy the unfair labor practices of Respondent Michael's. In *Golden State* the Supreme Court held that an employer who acquires and operates a business of an employer found guilty of unfair labor practices in basically unchanged form under circumstances which charge him with notice of unfair labor practices charges against his predecessor should be held responsible for remedying his predecessor's unlawful conduct. As indicated above, Respondent L.A. continued the business of Respondent Michael's with substantially the same employees, supervisors, equipment, management, and ownership. There can be no doubt that Michael and Laurie Abikasis were aware of the unfair labor practices committed by Respondent Michael's when they entered into the alleged sale of the business to Respondent L.A. Thus, even if Respondent L.A. was not considered a disguised continuance of Respondent Michael's, it would still be obligated to remedy the unfair labor practices of Respondent Michael's.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondents, Michael's Painting, Inc., and Painting L.A., Inc., their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees in order to discourage union membership or activities.

(b) Demanding immigration documents from its employees in order to discourage union membership or activities.

(c) Threatening to close its business if its employees engaged in union activities.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Interrogating its employees regarding their membership in, or support for, the Union.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer reinstatement to Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero to the positions they would have held, but for their unlawful discharges.

(b) Make whole Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero for any and all losses incurred as a result of Respondents' unlawful discharge of them, with interest, as provided in the section of this decision entitled "The Remedy."

(c) Within 14 days from the date of this Order, remove from its files any and all references to the discharges of Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero and notify them in writing that this has been done and that Respondents' discipline of them will not be used against them in any future personnel actions.

(d) Respondents shall, upon request, recognize and bargain collectively with Southern California Painters and Allied Trades, District Council No. 36, affiliated with International Brotherhood of Painters and Allied Trades, AFL–CIO, as the exclusive collective-bargaining representative from March 27, 1998, with respect to the painters employed by Respondents, regarding wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, timecards, social security payment records, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to determine the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Van Nuys, California facilities copies of the attached Notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by Respondents' authorized representative, shall be posted for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to ensure the notices are not altered, defaced, or covered by other material. Because Respondent Michael has gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the attached notice to all current employees and former employees employed by the Respondents at any time since March 27, 1998.

(g) Within 21 days after service by the Region, file with the Regional Director, a sworn certification of a responsible official on a form provided by the Region attesting to the steps Respondents have taken to comply.

Dated at San Francisco, California, July 10, 2000

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

The National Labor Relations Act gives all employees the following rights:

To organize themselves;
To form, join or support unions;
To bargain as a group through representatives of their own choosing;
To act together for collective bargaining or other mutual aid or protection;
To refrain from any or all such activity.

WE WILL NOT discharge employees in order to discourage union membership or activities.

WE WILL NOT demand immigration documents from employees because our employees engaged in union activities.

WE WILL NOT threaten to close our business if our employees engage in union activities.

WE WILL NOT interrogate our employees regarding their membership in, or support for, the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer reinstatement to Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero to the positions they would have held, but for their unlawful discharges.

WE WILL make whole Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero for any and all losses incurred as a result of our unlawful discharge of them, with interest.

WE WILL remove from our files any and all references to the unlawful discharges of Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero and notify each of them in writing that this has been done and that this unlawful discipline will not be used against them in any future personnel actions.

WE WILL, upon request, recognize and bargain collectively with Southern California Painters and Allied Trades, District Council No. 36, affiliated with International Brotherhood of Painters and Allied Trades, AFL–CIO, as the exclusive collective bargaining representative from March 27, 1998, with respect to the painters employed by Respondents Michael's Painting and Painting L.A., regarding wages, hours, and other

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

MICHAEL'S PAINTING, INC., AND
PAINTING L.A., INC.